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May 19, 2010

VIA ELECTRONIC FILING AND TELECOPY

Honorable Michael A. Shipp
U.S. Magistrate, United States District Court
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: **Walsh Securities, Inc. v. Cristo Property Management, et al.**
Civil Action No. 97-3496

Dear Judge Shipp:

This office represents Fidelity National Title Insurance Company and Nations Title Insurance Company in the above matter. We are in receipt of David Kott's letter forwarding a proposed Case Management Order and Robert Magnanini's objection to certain of the provisions of the proposed Order. Please note that it is our position that the form of Order provided by Mr. Kott should be issued without the changes proposed by Mr. Magnanini.

We believe it would be helpful for Your Honor to understand the genesis of the paragraphs of the proposed Case Management Order submitted by Mr. Kott which call for counsel to provide specific information as to the nature of the claims now being presented. As Your Honor is aware, this case involves approximately 220 allegedly fraudulent loans made by the plaintiff. Until the filing of the Fourth Amended Complaint, the claim asserted against our clients was solely a breach of contract claim under closing service letters alleged to have been issued at the closings. In the Fourth Amended Complaint, the plaintiff chose for the first time to assert claims for breach of the title insurance policies issued in connection with these loans. Since each loan is a different transaction, it is necessary for the plaintiff to establish facts supporting both its closing service letter claims and its title insurance policy claims as to each transaction.

Recognizing the amount of deposition time that would be necessary to review the facts of each individual transaction with the Rule 30(b)(6) deponent for Walsh to determine the transactions on which both types of claims were being presented and the facts supporting those claims, we suggested to counsel for plaintiff that we were prepared to provide plaintiff with an alternative to deal with this issue.

A Pennsylvania Limited Liability Partnership

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First, we told counsel we could go through each settlement file individually with the deponent in an effort to determine the properties on which each claim was being presented, the nature of the claim being presented, the documentation supporting the claim and the date on which notice of the claim was provided to the title insurance underwriters. The obvious problem with this alternative is the amount of time which will be necessary to conduct this inquiry and the need to obtain from the Court additional time with the 30(b)(6) witness to make these inquiries, without which defendants will be left to guess as to the basis for the claims asserted by plaintiff.¹

The alternative we proposed was for counsel to provide the defendants with a listing of the properties on which each type of claim was being submitted, the facts supporting the claim as to each property and the date and manner of notice of the claim to the title insurance companies. The providing of such a list would greatly narrow the focus of the inquiry required of the 30(b)(6) witness and will provide the defendants with the type of information we believe a plaintiff is obligated to provide under the Federal Rules of Civil Procedure. Quite frankly, it was my understanding based on statements by at least one of plaintiff's attorneys that he recognized our right to this information and that our proposal seemed to be more reasonable than requiring the 30(b)(6) deponent to be questioned about individual transactions and the facts supporting the claim as to each transaction.

We respectfully request that Your Honor give favorable consideration to the form of Order submitted by Mr. Kott as we believe it does not place an unreasonable burden on the plaintiff but instead simply requires it to disclose the type of information which the defendants are entitled to receive as part of discovery.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Edward J. Hayes'.

Edward J. Hayes

EJH:rcr

cc: Robert A. Magnanini, Esquire (via e-mail)
David R. Kott, Esquire (via e-mail)
Martin R. McGowan, Esquire (via e-mail)
All Counsel on Attached List

¹ While at least one member of Mr. Magnanini's firm seems to believe that we are not entitled to learn the specifics until the time of trial, we do not believe other members of his firm share that view.

SERVICE LIST

WALSH SECURITIES, INC. V. CRISTO PROPERTY MANAGEMENT, ET AL
CIVIL ACTION NO. 97-3496 (DRD)

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